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Re: MB Docket No. 05-311

COMMENTS OF THE CITY OF BOWIE, MARYLAND

These comments are filed by the City of Bowie, Maryland in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Bowie believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

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Bowie, Maryland is a city with a population of approximately 54,000 residents. Our current cable provider is Comcast Cable. Our community has negotiated cable franchises since 1983 when cable was first introduced in the area. Since that time we have negotiated 6 transfer agreements as well as a refranchise agreement with the incumbent provider.

Our current franchise began on October 4, 1999 and is set to expire on October 4, 2014. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 4 channels for PEG Access. Two of the channels are used for Government Access; one for Public Access and the fourth has been reserved for Educational purposes.

Our franchise requires that the cable company provide a Capital Equipment Grant in the amount of 3% of the gross revenues for PEG capital

costs, including capital costs for studio and production equipment, editing equipment and program playback equipment, and for Institutional Network (INET) construction and equipment, and dark fiber. The City designates one-third of that grant for capital expenditures associated with the public access studio. The City owns its own studio, which is used by area residents to produce Public Access programming. The City uses General Revenue funds to cover all costs associated with the staffing and operation of the studio. The remaining two thirds of the grant has been earmarked for capital costs associated with constructing and equipping the INET required under the original franchise agreement. This is a fiber optic network connecting 174 sites including all of the City of Bowie buildings with 17 other municipalities and all of the County government buildings, libraries, police and fire departments, and schools throughout Prince George's County.

Our franchise agreement requires the Franchisee to install, for use by the City, an Emergency Alert System which can be remotely activated by telephone to allow a City representative to override the audio and video on all channels on the Franchisee's system, without the assistance of the Franchisee. The system is only to be used in the event of a civil emergency or for reasonable tests of the system. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. For example: the Franchisee must provide service to any person that resides within 250 feet of their distribution system within seven days of the request for service, they must not require a subscriber to remove any antenna structures for the receipt of over the air television signals as a condition for providing cable service; and they must notify the general public prior to any construction that will significantly disturb or disrupt public property or public rights-of-way or have the potential to present a danger or affect the safety of the public. The Franchisee must maintain at least one local toll-free or collect call telephone access line which will be available to subscribers twenty-four (24) hours a day, seven (7) days a week with trained representatives available to answer subscriber inquiries during normal business hours, and the Franchisee must maintain an office within the City of Bowie that shall be open during normal business hours to allow subscribers to request service, pay bills and conduct other business. The Franchisee is also subject to telephone answering standards as well as installation and servicing standards.

Our franchise requires that the cable operator currently provide service to the entire incorporated area of the City. Any areas annexed after the effective date of the Agreement required the Franchisee to provide service to all parts of the City having a density of at least 20 residences per mile.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains a provision whereby the City may conduct a mid-term technical review of the Franchisee's cable system at any time after the eighth year of the franchise. The purpose of the review is to evaluate the technical performance and capabilities of the Franchisee's System, including the Institutional Network, to determine whether to require a system upgrade to conform with technical improvements then commonly in use in the industry and available on systems in communities similar to the City

Our franchise contains an "effect of competition" clause whereby the Franchisee may request that the City decrease Franchisee's future obligations under the agreement to the level of the future obligations of a video competitor if, at the time of the request, the Franchisee's comparable obligations are 10% greater than the obligations of the video competitor and if the video competitor serves residential subscribers totaling at least 10% or more of the number of residential subscribers then served by the Franchisee for at least six consecutive months.

Our franchise agreement requires the Franchisee to maintain worker's compensation and employer liability insurance meeting all requirements of Maryland law. It also requires the Franchisee to maintain comprehensive general liability insurance insuring the City and the Franchisee with respect to the construction, operation and maintenance of the cable system and the conduct of the Franchisee's business in the City including coverage for all risks from premises-operations, explosions etc. Franchisee is also required to maintain automobile liability insurance. In addition the Franchisee must maintain an irrevocable letter of credit in the amount of \$51,000 and a performance bond in the amount of \$350,000 both of which may be reduced upon completion of the system upgrade

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the City's Public Works Department but they are not required to pay a permit fee.

Because the Franchisee's failure to comply with provisions of the franchise agreement would result in injury to the City, and because it would

be difficult to estimate the extent of such injury, the City and the Franchisee agreed to liquidated damages for Franchisee's failure to submit plans, complete the build out of the system, for transferring the system without prior consent of the City or for failing to comply with the PEG requirements. In addition damages are assessed for violation of customer service standards or to pay franchise fees, for violation of technical standards established by the FCC and for failing to obtain or maintain any required letter of credit or performance bond.

The Franchising Process

The cable system serving our community also serves many adjoining communities: In 1999 our community worked together with approximately 18 other jurisdictions to issue a cable franchise to Comcast Cable. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: “ if the franchisee's rights, benefits, obligations or duties specified in the agreement are materially altered as the result of changes in City ordinances that are incorporated by reference or otherwise, then the agreement is to be promptly amended so that the rights, benefits, obligations and duties of the Franchisee are restored to the maximum extent possible. In the event that the parties are unable to agree upon an amendment, the scope of any amendment shall be determined by a court of competent jurisdiction.”

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: prior to enforcing any of the customer service standards the City is required

to give the Franchisee 30 days notice and in most instances 60-90 days to cure. There are requirements for Public Hearings should the City decide to take action to revoke or shorten the franchise due to non- performance by the Franchisee

Competitive Cable Systems

Our City is currently in negotiations with Verizon. They approached the City back in May of 2005 and initially wanted to negotiate using their standard form. We have been able to reach agreement on most of the items and believe that we are close to reaching an agreement comparable to the one we now have with Comcast. Verizon has indicated a willingness to build the entire City within the same twelve (12) month timeframe as the incumbent.

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Conclusions

The local cable franchising process functions well in the City of Bowie. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Bowie, Maryland therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising

process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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